

**RULES
OF
TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION
BUREAU OF ENVIRONMENT
DIVISION OF AIR POLLUTION CONTROL**

**CHAPTER 1200-3-26
ADMINISTRATIVE FEES SCHEDULE**

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1200-3-26-.01 TENNESSEE VISIBLE EMISSIONS EVALUATION COURSE FEES.

- (1) The effective date of this fee schedule shall be July 16, 1990.
- (2) Fee Schedule

Initial Certification Tennessee Applicant.....\$125.00
Recertification Tennessee Applicant.....\$ 95.00
Initial Certification Out-of-State Applicant.....\$175.00
Recertification Out-of-State Applicant.....\$125.00

Authority: T.C.A. §§68-201-105 and 4-5-202 et. seq. **Administrative History:** Original rule filed June 1, 1990; effective July 16, 1990. Repeal and new rule filed July 5, 1994; effective September 18, 1994.

1200-3-26-.02 CONSTRUCTION AND ANNUAL EMISSION FEES.

- (1) Purpose
 - (a) It is the purpose of this rule to establish construction and annual emission fees sufficient to supplement existing state and federal funding that covers reasonable costs (direct and indirect) associated with the development, processing, and administration of the air pollution control program. This will provide for better quality evaluation of the impact of air emissions on the citizens of Tennessee, and timely permitting services for sources subject to permitting requirements.
 - (b) Such costs shall include, but not be limited to costs associated, with review of applications and reports, issuance of required permits and associated inspection of sources, unit observation, review and evaluation of monitoring results (stack and/or ambient), modeling, and costs associated with any necessary enforcement actions (excluding penalties assessed).
 - (c) Annual emission fees collected from sources named by the Board in the Division's Workload Analysis as being major sources pursuant to the provisions of Title V of the federal Clean Air Act and the federal regulations at 40 CFR Part 70 [FR Vol 57, No. 140, Tuesday, July 21, 1992 p32295-32312] and the definition of a major source in subparagraph 1200-3-26-.02(2)(g) shall be used to pay for the direct and indirect costs of:
 1. Preparing generally applicable regulations or guidance regarding the permit program or its implementation or enforcement;

(Rule 1200-3-26-.02, continued)

2. Reviewing and acting on any application for a permit, permit revision, or permit renewal, including the development of an applicable requirement as part of the processing of a permit, or permit revision or renewal;
3. General administrative costs of running the permit program, including the supporting and tracking of permit applications, compliance certification and related data entry;
4. Implementing and enforcing the terms of any part 70 permit (not including any court costs or other costs associated with an enforcement action), including adequate resources to determine which sources are subject to the program;
5. Emissions and ambient monitoring;
6. Modeling, analyses, or demonstrations;
7. Preparing inventories and tracking emissions; and
8. Providing direct and indirect support to sources under the Small Business Stationary Source Technical and Environmental Compliance Assistance Program.

(2) Definitions

Unless specifically defined in this Chapter, the definitions from Chapter 1200-3-2 will apply. All terms defined in this chapter apply only to the provisions of this chapter.

- (a) “Air contaminant” is particulate matter, dust, fumes, gas, mist, smoke, or vapor, or any combinations thereof.
- (b) “A Source subject to Fees (Source)” is any and all sources of emission of air contaminants, whether privately or publicly owned or operated, that is required to obtain a permit from the Division.
- (c) “Annual Accounting Period” is a twelve (12) consecutive month period. For major sources subject to paragraph 1200-3-26-.02(9), the annual accounting period is July 1st to June 30th of the following year.
- (d) “Allowable emissions” mean the emissions rate of a source calculated at full design capacity operating twenty-four (24) hours per day, every day of the annual accounting period or calculated at the operating time and/or other operating conditions specified in a legally enforceable permit, and the most stringent of the following:
 1. The applicable standards under Division 1200-3;
 2. The emission rate specified in a legally enforceable permit condition established pursuant to rule 1200-3-9-.01 including those with a future compliance date; or pursuant to rule 1200-3-9-.02; or
 3. If no allowable emission rate is specified pursuant to part 1. or part 2. above, the actual emissions will equal the allowable emission rate solely for the purposes of fee computation. In no way is this item to be considered the setting of a binding emission limitation pursuant to the provisions of chapter 1200-3-9. The actual emission rate will be calculated as the maximum actual emissions expected of full design capacity operating twenty-four (24) hours per day, every day of the annual accounting period, or expected at the operating time specified in a legally enforceable permit.

(Rule 1200-3-26-.02, continued)

- (e) “Division” means the Tennessee Division of Air Pollution Control.
- (f) “Legally enforceable” means all limitations and conditions which are enforceable by the Technical Secretary, including those under this Division 1200-3, the State Implementation Plan, and any permit requirements established pursuant to Chapter 1200-3-9. For Major sources, legally enforceable also includes a limitation or condition that is enforceable by the United States Environmental Protection Agency or its administrator.
- (g) “Major source” means any source or group of sources located within a contiguous area, and under common control which is regulated by one of the following:
 - 1. A source subject to the Prevention of Significant Deterioration (PSD) requirements, paragraph 1200-3-9-.01(4).
 - 2. A source subject to the requirements for nonattainment areas, subparagraph 1200-3-9-.01(5)(b) which must meet a lowest achievable emission rate (LAER) limitation.
 - 3. “Major source” means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person [or persons under common control]) belonging to a single major industrial grouping and that are described in subparts (i), (ii), or (iii) of this definition. For the purposes of defining “major source,” a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987.
 - (i) A major source under section 112 of the Federal Act which is defined as:
 - (I) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tons per year (tpy) or more of any hazardous air pollutant which has been listed pursuant to section 112(b) of the Federal Act, 25 tpy or more of any combination of such hazardous air pollutants, or such lesser quantity as the Administrator may establish by rule. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or
 - (II) For radionuclides, “major source” shall have the meaning specified by the Administrator by rule.
 - (ii) A major stationary source of air pollutants, as defined in section 302 of the Federal Act, that directly emits or has the potential to emit, 100 tpy or more of any air pollutant (including any major source of fugitive emissions of any such pollutant, as determined by rule by the Administrator). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of section 302(j) of the Federal Act, unless the source belongs to one of the following categories of stationary sources:

(Rule 1200-3-26-.02, continued)

- (I) Coal cleaning plants (with thermal dryers);
- (II) Kraft pulp mills;
- (III) Portland cement plants;
- (IV) Primary zinc smelters;
- (V) Iron and steel mills;
- (VI) Primary aluminum ore reduction plants;
- (VII) Primary copper smelters;
- (VIII) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (IX) Hydrofluoric, sulfuric, or nitric acid plants;
- (X) Petroleum refineries;
- (XI) Lime plants;
- (XII) Phosphate rock processing plants;
- (XIII) Coke oven batteries;
- (XIV) Sulfur recovery plants;
- (XV) Carbon black plants (furnace process);
- (XVI) Primary lead smelters;
- (XVII) Fuel conversion plant;
- (XVIII) Sintering plants;
- (XIX) Secondary metal production plants;
- (XX) Chemical process plants;
- (XXI) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
- (XXII) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (XXIII) Taconite ore processing plants;
- (XXIV) Glass fiber processing plants;
- (XXV) Charcoal production plants;

(Rule 1200-3-26-.02, continued)

- (XXVI) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or
- (XXVII) All other stationary source categories regulated by a standard promulgated under section 111 or 112 of the Federal Act, but only with respect to those air pollutants that have been regulated for that category;
- (iii) A major stationary source as defined in part D of title I of the Federal Act, including:
 - (I) For ozone nonattainment areas, sources with the potential to emit 100 tpy or more of volatile organic compounds or oxides of nitrogen in areas classified as “marginal” or “moderate,” 50 tpy or more in areas classified as “serious,” 25 tpy or more in areas classified as “severe,” and 10 tpy or more in areas classified as “extreme”; except that the references in this paragraph to 100, 50, 25, and 10 tpy of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under section 182(f)(1) or (2) of the Federal Act, that requirements under section 182(f) of the Federal Act do not apply;
 - (II) For ozone transport regions established pursuant to section 184 of the Federal Act, sources with the potential to emit 50 tpy or more of volatile organic compounds;
 - (III) For carbon monoxide nonattainment areas (1) that are classified as “serious,” and (2) in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 tpy or more of carbon monoxide; and
 - (IV) For particulate matter (PM-10) nonattainment areas classified as “serious,” sources with the potential to emit 70 tpy or more of PM-10.
- (h) “Minor Source” means any source or group of sources located within a contiguous area, and under common control which is not a major source for the purposes of this rule. However, for the sole purpose of emission fee calculation, affected sources subject to the acidic precipitation requirements of Title IV of the Federal Clean Air Act embodied at 42 U.S.C. 7401 et seq. shall be considered minor sources subject to the provisions of paragraph 1200-3-26.02(6) until the year 2000. At that time, the affected sources will become major sources subject to paragraph 1200-3-26-.02(9).
- (i) “Regulated pollutant” means allowable emissions (and/or actual emissions for major sources) of 4,000 tons per year or less from a source for each of the following compounds or substances:
 - 1. Each pollutant regulated under chapter 1200-3-11 HAZARDOUS AIR CONTAMINANTS (Excluding Transitory Asbestos from construction, demolition, and renovation).
 - 2. Each regulated pollutant from a source subject to the provisions of chapter 1200-3-16 NEW SOURCE PERFORMANCE STANDARDS.
 - 3. Volatile Organic Compounds (VOC)
 - 4. Particulates

(Rule 1200-3-26-.02, continued)

5. For major sources, the following pollutants:
 - (i) Nitrogen oxides or any volatile organic compounds:
 - (ii) Any pollutant for which a national ambient air quality standard has been promulgated;
 - (iii) Any pollutant that is subjected to any standard promulgated under section 111 of the Federal Act;
 - (iv) Deleted.
 - (v) Any pollutant subject to a standard promulgated under section 112 or other requirements established under section 112 of the Federal Act, including sections 112 (g), and (j), of the Act, including the following:
 - (I) Any pollutant subject to requirements under section 112(j) of the Federal Act. If the Administrator fails to promulgate a standard by the date established pursuant to section 112 (e) of the Federal Act, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to section 112(e) of the Federal Act; and
 - (II) Any pollutant for which the requirements of section 112(g)(2) of the Federal Act have been met, but only with respect to the individual source subject to section 112(g)(2) requirement except that carbon monoxide, any pollutant regulated as a Class I or Class II substance subject to a standard promulgated under Title VI of the Federal Clean Air Act or any pollutant regulated solely because it is subject to the provision of Section 112(r) of the Federal Clean Air Act shall not be included in the compilation of pollutants at part 1200-3-9-2(11)(b)19.
6. Sulfur Dioxide (SO₂)
7. Nitrogen Oxides (NO_x)
8. Lead (Pb)
9. Gaseous Fluorides expressed as Hydrogen Fluoride (HF)
10. Carbon Monoxide (no charge)
11. Hydrogen Chloride (HCl)
12. Each hazardous air pollutant listed below actually emitted or allowed to be emitted from a major source.

<u>CAS No.</u>	<u>Chemical name</u>
75070	Acetaldehyde
60355	Acetamide
75058	Acetonitrile
98862	Acetophenone

(Rule 1200-3-26-.02, continued)

53963	2-Acetylaminofluorene
107028	Acrolein
79061	Acrylamide
79107	Acrylic acid
107131	Acrylonitrile
107051	Allyl chloride
92671	4-Aminobiphenyl
62533	Aniline
90040	o-Anisidine
1332214	Asbestos
71432	Benzene (including benzene from gasoline)
92875	Benzidine
98077	Benzotrichloride
100447	Benzyl chloride
92524	Biphenyl
117817	Bis(2-ethylhexyl)phthalate(DEHP)
542881	Bis(chloromethyl) ether
75252	Bromoform
106990	1,3-Butadiene
156627	Calcium cyanamide
133062	Captan
63252	Carbaryl
75150	Carbon disulfide
56235	Carbon tetrachloride
463581	Carbonyl sulfide
120809	Catechol
133904	Chloramben
57749	Chlordane
7782505	Chlorine
79118	Chloracetic acid
532274	2-Chloroacetophenone
108907	Chlorobenzene
510156	Chlorobenzilate
67663	Chloroform
107302	Chloromethyl methyl ether
126998	Chloroprene
1319773	Cresols/Cresylic acid (isomers and mixture)
95487	o-Cresol
108394	m-Cresol
106445	p-Cresol
98828	Cumene
94757	2,4-D, salts and esters
3547044	DDE
334883	Diazomethane
132649	Dibenzofurans
96128	1,2-Dibromo-3-chloropropane
84742	Dibutylphthalate
106467	1,4-Dichlorobenzene(p)
91941	3,3-Dichlorobenzidene
111444	Dichloroethyl ether (Bis(2-chloroethyl)ether)
542756	1,3-Dichloropropene
62737	Dichlorvos
111422	Diethanolamine

(Rule 1200-3-26-.02, continued)

121697	N,N-Diethyl aniline (N,N-Dimethylaniline)
64675	Diethyl sulfate
119904	3,3-Dimethoxybenzidine
60117	Dimethyl aminoazobenzene
119937	3,3'-Dimethylbenzidine
79447	Dimethyl carbamoyl chloride
68122	Dimethyl formamide
57147	1,1-Dimethyl hydrazine
131113	Dimethyl phthalate
77781	Dimethyl sulfate
534521	4,6-Dinitro-o-cresol, and salts
51285	2,4-Dinitrophenol
121142	2,4-Dinitrotoluene
123911	1,4-Dioxane (1,4-Diethyleneoxide)
122667	1,2-Diphenylhydrazine
106898	Epichlorohydrin (1-Chloro-2,3-epoxypropane)
106887	1,2-Epoxybutane
140885	acrylate
100414	Ethyl benzene
51796	Ethyl carbamate (Urethane)
75003	Ethyl Chloride (Chloroethane)
106934	Ethylene dibromide (Dibromoethane)
107062	Ethylene dichloride (1,2-Dichlorethane)
107211	Ethylene glycol
151564	Ethylene imine (Aziridine)
75218	Ethylene oxide
96457	Ethylene thiourea
75343	Ethylidene dichloride (1,1-Dichloroethane)
50000	Formaldehyde
76448	Hepotachlor
118741	Hexachlorobenzene
87683	Hexachlorobutadiene
77474	Hexachlorocyclopentadiene
67721	Hexachloroethane
822060	Hexamethylene-1,6-diisocyanate
680319	Hexamethylphosphoramide
110543	Hexane
302012	Hydrazine
7647010	Hydrochloric acid
7664393	Hydrogen fluoride (Hydrofluoric acid)
123319	Hydroquinone
78591	Isophorone
58899	Lindane (all isomers)
108316	Maleic anhydride
67561	Methanol
72435	Methoxychlor
74839	Methyl bromide (Bromomethane)
74873	Methyl chloride (Chloromethane)
71556	Methyl chloroform (1,1,1-Trichloroethane)
78933	Methyl ethyl ketone (2-Butanone)
60344	Methyl hydrazine
74884	Methyl iodide (Iodomethane)
108101	Methyl isobutyl ketone (Hexone)

(Rule 1200-3-26-.02, continued)

624839	Methyl isocyanate
80626	Methyl methacrylate
1634044	Methyl tert butyl ether
101144	4,4-Methylene bis(2-chloroniline)
75092	Methylene chloride (Dichloromethane)
101688	Methylene diphenyl diisocyanate (MDI)
101779	4,4-Methylenedianiline
91203	Naphthalene
98953	Nitrobenzene
92933	4-Nitrobiphenyl
100027	4-Nitrophenol
79469	2-Nitropropane
684935	N-Nitroso-N-methylurea
62759	N-Nitrosodimethylamine
59892	N-Nitrosomorpholine
56382	Parathion
82688	Pentachloronitrobenzene (Quintobenzene)
87865	Pentachlorophenol
108952	Phenol
106503	p-Phenylenediamine
75445	Phosgene
7803512	Phosphine
7723140	Phosphorus
85449	Phthalic anhydride
1336363	Polychlorinated biphenyls (Arochlors)
1120714	1,3-Propane sultone
57578	beta-Propiolactone
123386	Propionaldehyde
114261	Propoxur (Baygon)
78875	Propylene dichloride (1,2-Dichloropropane)
75569	Propylene oxide
75558	1,2-Propylenimine (2-Methyl aziridine)
91225	Quinoline
106514	Quinone
100425	Styrene
96093	Styrene oxide
1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin
79345	1,1,2,2-Tetrachloroethane
127184	Tetrachloroethylene (Perchloroethylene)
7550450	Titanium tetrachloride
108883	Toluene
95807	2,4-Toluene diamine
584849	2,4-Toluene diisocyanate
95534	o-Toluidine
8001352	Toxaphene (chlorinated camphene)
120821	1,2,4-Trichlorobenzene
79005	1,1,2-Trichloroethane
79016	Trichloroethylene
95954	2,4,5-Trichlorophenol
88062	2,4,6-Trichlorophenol
121448	Triethylamine
1582098	Trifluralin
540841	2,2,4-Trimethylpentane

(Rule 1200-3-26-.02, continued)

108054	Vinyl acetate
593602	Vinyl bromide
75014	Vinyl chloride
75354	Vinylidene chloride (1,1-Dichloroethylene)
1330207	Xylenes (isomers and mixture)
95476	o-Xylenes
108383	m-Xylenes
106423	p-Xylenes
0	Antimony Compounds
0	Arsenic Compounds (inorganic including arsine)
0	Beryllium Compounds
0	Cadmium Compounds
0	Chromium Compounds
0	Cobalt Compounds
0	Coke Oven Emissions
0	Cyanide compounds ¹
0	Glycol ethers ²
0	Lead Compounds
0	Manganese Compounds
0	Mercury Compounds
0	Fine mineral fibers ³
0	Nickel Compounds
0	Polycyclic Organic Matter ⁴
0	Radionuclides (including radon) ⁵
0	Selenium Compounds

¹X'CN where X = H' or any other group where a formal dissociation may occur. For example KCN or Ca(CN)₂

²Includes mono- and di-ethers of ethylene glycol, diethylene glycol, and triethylene glycol R-(OCH₂CH₂)_n - OR' where n = 1, 2, or 3
R = alkyl or aryl groups
R' = R, H, or groups which, when removed, yield glycol ethers with the structure: R-(OCH₂CH₂)_n - OH, Polymers are excluded from the glycol category.

³Includes mineral fiber emissions from facilities manufacturing or processing glass, rock, or slag fibers (or other mineral derived fibers) of average diameter 1 micrometer or less.

⁴Includes organic compounds with more than or equal to 100°C which have a boiling point greater than or equal to 100°C

⁵A type of atom which spontaneously undergoes radioactive decay.

- (j) "Construction "means for the purpose of this rule, any activities that require a source to obtain a construction permit under the provisions of rule 1200-3-2-.01 and rule 1200-3-9-.01.
- (k) "Synthetic minor source" is a minor or major source that wishes to restructure its allowable emissions for the purposes of lowering its annual emission fees. Upon mutual agreement of the responsible official and the Technical Secretary, a more restrictive regulatory requirement may be established to minimize the allowable emissions and thus the annual emission fee."
- (l) "Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or

(Rule 1200-3-26-.02, continued)

processed, shall be treated as part of its design if the limitation is enforceable by the Administrator. This term does not alter or affect the use of this term for any other purposes under the Federal Act, or the term “capacity factor” as used in title IV of the Federal Act or the Federal regulations promulgated thereunder.

(m) “Responsible official” means one of the following:

1. For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:
 - (i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or
 - (ii) The delegation of authority to such representative is approved in advance by the Technical Secretary;
2. For a partnership or sole proprietorship: a general partner or the proprietor, respectively;
3. For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. for the purposes of this part, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA); or
4. For affected sources:
 - (i) The designated representative in so far as actions, standards, requirements, or prohibitions under title IV of the Federal Act or the regulations promulgated thereunder are concerned; and
 - (ii) The designated representative for any other purposes under Division Rules. However, a person other than the designated representative may serve as the responsible official for non title IV activities.

(n) “Federal Act” means the Clean Air Act, as amended, 42 U.S.C. 7401, et. seq. as amended by Public Law No. 101-549 (November 15, 1990).

(o) “Affected source” shall have the meaning given to it in the federal regulations promulgated under title IV of the Federal Act.

(p) “EPA or the Administrator” means the Administrator of the EPA or his designee.

(q) “Conditional Major Source” for the purpose of fee payments, means a source that would otherwise be considered a major source under potential to emit conditions if it were not for a mutually agreed upon, more restrictive permit limit than that prescribed by regulation or a more restrictive permit limitation upon operating hours and/or production rates than that which would otherwise be possible at the source.

(3) GENERAL PROVISIONS.

(Rule 1200-3-26-.02, continued)

- (a) A source must meet all provisions and limitations specified in the permit(s) for construction and operation of the source.
- (b) On or after December 1, 1991, all annual emission fees must be paid in full by the due date specified in paragraph (6)(c) of this rule. Major sources subject to the provisions of paragraph 1200-3-26-.02(9) shall continue to pay annual emission fees under the provisions of paragraph 1200-3-26-.02(6) until July 1, 1994. In the year of their transition from the provisions of the aforementioned paragraph to the provisions of paragraph 1200-3-26-.02(9), the major source must pay the fractional balance of their schedule I fee calculation period (number of months from the due date to July 1, 1994 divided by 12, that quotient being multiplied against the appropriate annual emission fee from Schedule III). Thereafter, the provisions of paragraph 1200-3-26-.02(9) shall apply.
- (c) Any source exempted in rule 1200-3-9-.04 EXEMPTIONS is exempt from the annual emission fee requirements of this chapter. However, the emissions from any exempt source must comply with all rules and regulations of the Tennessee Air Pollution Control Board.
- (d) If a responsible official wishes to reduce the amount of the fee by utilizing the provisions of subparagraph 1200-3-26-.02(6)(b), the official may request a meeting with the Division to discuss the annual emission fee assessment. This meeting will be an informal review meeting and must be requested in writing at least 90 days prior to the due date of the annual emission fee. Any request received after that deadline may only apply to the fee for the following year and not for the year being invoiced. The informal review meeting will be for the purpose of explaining to the responsible official the computation methods used to determine the annual emission fee. The responsible official for a major source may restructure their fee liability through a reduction in allowable emission rates only during the periods of restructuring eligibility that are declared at part 1200-3-26-.02(9)(b)1.
- (e) Any responsible official, who disagrees with the calculation or the applicability of the fee may petition the Tennessee Air Pollution Control Board (Board) for a hearing. In order to perfect a hearing, a petition for a hearing together with the total amount of the fee due must be received by the Technical Secretary of the Board not later than fifteen (15) days after the due date. Such hearing shall be in accordance with contested case provisions set forth in Title 4, Chapter 5, T.C.A. If the annual emission fee paid was improperly assessed, the Technical Secretary shall return the amount determined to be improperly assessed plus interest on the excess accrued from the date the emission fee was paid.
- (f) If a responsible official requests an operating permit that is later determined by the Division to be subject to the construction permit rule, the permit application submittal shall not be subject to the time lines in this rule until complete construction permit applications are submitted.
- (g) Any responsible official impacted by the decision in subparagraph (f) above who disagrees, may petition the Tennessee Air Pollution Control Board for a hearing. The hearing shall be in accordance with contested case provisions as set forth in Title 4, Chapter 5, T.C.A. 4-5-301 et. seq.
- (h) In the event a fee is paid for a construction permit and it is later determined that only an operating permit is needed, fifty percent (50%) of the fee will be credited toward the annual emission fee for the source and the other fifty percent (50%) forfeited for the permit review.
- (i) Where more than one (1) allowable emission limit is applicable to a regulated pollutant, the allowable emissions for the regulated pollutants shall not be double counted.

(Rule 1200-3-26-.02, continued)

1. Major sources subject to the provisions of paragraph 1200-3-26-.02(9) shall apportion their emissions as follows to ensure that their fees are not double counted.
 - (i) Sources that are subject to federally promulgated hazardous air pollutant standards that can be imposed under Chapter 1200-3-11 or Chapter 1200-3-31 will place such regulated emissions in the specific hazardous air pollutant under regulation. If the pollutant is also in the family of volatile organic compounds or the family of particulates, the pollutant shall not be placed in that respective family category.
 - (ii) A miscellaneous category of hazardous air pollutants shall be used for hazardous air pollutants listed at part 1200-3-26-.2 (2)(i)12 that do not have an allowable emission standard. A pollutant placed in this category shall not be subject to being placed in any other category such as volatile organic compounds or particulates.
 - (iii) Each individual hazardous air pollutant and the miscellaneous category of hazardous air pollutants is subject to the 4,000 ton cap provisions of subparagraph 1200-3-26-.02(2)(i).
 - (iv) Major sources that wish to pay annual emission fees for PM10 on an allowable emission basis may do so if they have a specific PM10 allowable emission standard. If a major source has a total particulate emission standard, but wishes to pay annual emission fees on an actual PM 10 emission basis, it may do so if the PM10 actual emission levels are proven to the satisfaction of the Technical Secretary. The method to demonstrate the actual PM10 emission levels must be made as part of the source's major source operating permit in advance in order to exercise this option. The PM10 emissions reported under these options shall not be subject to fees under the family of particulate emissions. The 4,000 ton cap provisions of subparagraph 1200-3-26-.02(2)(i) shall also apply to PM10 emissions.

(4) COMPLETE APPLICATIONS

- (a) A construction permit application is not considered complete unless the application filing/processing fee has been paid in full. The application filing/processing fee is not refundable, except as provided in paragraph (5)(f) of this rule. Any overpayment of the application filing/processing fee is applied to the annual emission fee as a credit. The effective date of this provision is October 24, 1991.
- (b) For the purposes of determining whether or not the Division has acted in the time frame established to process permit applications set forth in paragraph (5), the evaluation period shall not begin until a complete application has been filed in the Division of Air Pollution Control's Nashville office.
- (c) The Division shall denote the date that all applications for construction permits are received in its Nashville office. Applications received after 4:30 p.m. local time will be stamped as being received the next working day.
- (d) Upon receipt of a construction permit application, the Division must examine it to insure that it is complete and advise the applicant in writing of its findings via certified mail. Thirty (30) days will be allowed for the review. The thirty (30) days completeness evaluation time period is extended to ninety (90) days for minor sources of the nonattainment pollutant located within the boundary of a nonattainment area so designated by the Board and/or the United States

(Rule 1200-3-26-.02, continued)

Environmental Protection Agency. [Note: For ozone nonattainment the pollutant is Volatile Organic Compounds (VOC) and/or oxides of nitrogen.]

1. If an application for a construction permit is determined to be incomplete, the Division must notify the applicant in writing via certified mail of the finding with a brief explanation of the deficiencies. The application filing/processing fee shall be retained by the Division.
 2. After receiving notice from the Division that the application was incomplete, the applicant shall have one hundred eighty (180) calendar days to correct the deficiencies. If properly corrected, the application will be processed and no additional fee is required. The permit will then be granted or denied in accordance with Division Rules. If the deficiencies are not corrected within the one hundred eighty (180) day correction period, the fee will be forfeited in its entirety to the Division and the Division will officially deny the permit based on the incomplete permit application. If the applicant re-applies, a new application/processing fee must be paid in full along with the re-application.
 3. It is the express intent of the Board that the one hundred eighty (180) day permit application correction period is not to be construed by an applicant as permission to construct or modify a source without the permit required by Division Rules.
 4. Upon receipt of a corrected application revised pursuant to part 1, 2, or 3 of this subparagraph, the Division shall re-evaluate the application and notify the applicant of its finding as to whether or not the application is considered to be complete. If the application is still deemed incomplete the source has the remainder of the initial one hundred eighty (180) day period to correct the deficiencies or forfeit the fee in its entirety. Unless a determination that a corrected application is not complete is made by the Division and communicated to the applicant via certified mail within thirty (30) days of receipt, the corrected application shall be deemed to be complete for the purpose of starting the Division's permit processing deadline schedule. However, if additional information is still needed to process the permit, the applicant has a duty to furnish said information or face denial of the permit.
- (e) Revisions to a construction permit application to reflect changes in the design of the source or the materials to be processed therein will be accepted by the Division during the permit processing period. However, the deadline for evaluation as to issuance of a permit or denial of the request will restart upon each and every significant revision as though it were an entirely new permit.

(5) CONSTRUCTION FEES.

- (a) On and after October 24, 1991, a responsible official applying for the construction permit [i.e. construction as defined in rule 1200-3-26-.02(2)(j)] required by rule 1200-3-9-.01 must pay a construction permit application filing/processing fee as set forth in subparagraph (5)(g) Schedule A, of this rule unless they are exempted from construction permit fees pursuant to subparagraph 1200-3-26-.02(9)(a). The fee determined from Schedule A shall be calculated based on increases in emissions of regulated pollutants.
- (b) With the exception of changes received during the initial construction permit evaluation period (i.e. prior to the certified letter denoting application completeness) all revisions under subparagraph 1200-3-26-.02(4)(e) which result in an increase in allowable emissions sought by the applicant or an increase in actual emissions declared in the original application for a permit shall be subject to a fee equal to one-half of the Schedule A fee corresponding to the applicant's anticipated maximum emission rate, not to exceed \$500.

(Rule 1200-3-26-.02, continued)

- (c) On and after October 24, 1991 a responsible official applying to make a change to a source such that a new construction permit is required, must pay a permit processing fee equal to one-half the Schedule A fee corresponding to the applicant's anticipated maximum emission rate, not to exceed \$500.
- (d) The Division must consider all applications for construction that are received from a source in the Division's Nashville office on the same date as a source submittal. The source submittal is subject to the applicable permit filing/processing fee.
- (e) The Division must make a decision to issue or deny a request for a construction permit and notify the applicant of that decision in accordance with the following time lines:
 - 1. Major Source reviews must be completed in one hundred eighty (180) days, from receipt of a complete application unless a longer time period is agreed to in writing by the applicant.
 - 2. Minor Source reviews must be completed within one hundred fifteen (115) days from receipt of a complete application.
- (f) In the event that the Division fails to process the construction permit application within the time lines established in subparagraph (e) of this paragraph, the Division will refund the permit filing/processing fee to the applicant in full. The refund will be made within thirty (30) days following the date that the deadline for a decision on that particular permit application was established. For refunds in excess of \$1,000, additional time to permit review and approval of the refund by the Tennessee Attorney General's Office shall be allowed.
- (g) The appropriate permit filing/processing fee shall be determined by the applicant from the following schedule:

SCHEDULE A - CONSTRUCTION PERMIT FEES

Anticipated Maximum Emission Rate	(Filing/Processing) Permit Fee
Less Than 10 Tons/Year	\$ 100.00
10 to < 100 Tons/Year	\$ 500.00
100 to < 250 Tons/Year	\$1,000.00
250 to < 500 Tons/Year	\$2,000.00
500 to < 1,000 Tons/Year	\$3,000.00
1,000 to < 5,000 Tons/Year	\$4,000.00
5,000 to Greater Tons/Year	\$5,000.00

(6) ANNUAL EMISSION FEES FOR MINOR SOURCES.

- (a) A responsible official of a minor source must pay an annual emission fee to the Division. The annual emission fee shall be based on the source's allowable emissions as defined in subparagraph 1200-3-26-.02(2)(d).
- (b) The minor source annual emission fee must be calculated as the sum of allowable emissions of all regulated pollutants at a source. Upon mutual agreement of the responsible official and the Technical Secretary, a more restrictive regulatory requirement may be established to minimize the allowable emissions and thus the annual emission fee. The more restrictive requirement must be specified on the permit, and must include the method used to determine compliance

(Rule 1200-3-26-.02, continued)

with the limitation. The documentation procedure to be followed by the source owner or operator must also be included to insure that the limit is not exceeded. Exceedances of the mutual agreement limit will be considered by the Board as circumvention of the required annual emissions fee and a matter in which enforcement action must be pursued.

- (c) Beginning December 1, 1991 all minor source annual emission fees are due and payable to the Division in full according to Schedule I of this subparagraph. The county that a source is located in determines when the minor source annual emission fee is due. If a source is located on contiguous property in more than one county, the county appearing earliest in the calendar year shall be used to determine the due date of the annual emission fee. The fee must be paid to the Division in full by the first (1st) day of the month that the fee is due. The Technical Secretary may extend this due date an additional ninety (90) days where he finds that the minor source owner or operator's fee notice was mailed by the Division to an incorrect mailing address.

SCHEDULE I

Month the Annual Emissions Fee is Due (Accounting Period)
Counties in the Monthly Grouping

January	Anderson, Bedford, Benton Bledsoe, Blount, Bradley and Campbell
February	Cannon, Carroll, Carter, Cheatham, Chester, Claiborne, Clay and Cocke
March	Coffee, Crockett, Cumberland, Decatur, DeKalb, Dickson, Dyer and Fayette
April	Fentress, Franklin, Gibson, Giles, Grainger, Greene and Grundy
May	Hamblen, Hancock, Hardeman, Hardin, Hawkins, Haywood and Henderson
June	Henry, Hickman, Houston, Humphreys, Jackson, Jefferson, Johnson, Lake, Lauderdale, Lawrence and Lewis
July	Lincoln, Loudon, McMinn, McNairy, Macon and Madison
August	Marion, Marshall, Maury, Meigs, Monroe, Montgomery, Moore and Morgan
September	Obion, Overton, Perry, Pickett, Polk, Putnam and Rhea
October	Roane, Robertson, Rutherford, Scott, Sequatchie and Sevier
November	Smith, Stewart, Sullivan, Sumner, Tipton, Trousdale, Unicoi and Union
December	Van Buren, Warren, Washington, Wayne, Weakley, White, Williamson and Wilson

- (d) A newly constructed minor source beginning operation subsequent to the annual accounting period for the county in which it is located shall not be required to pay an annual emission fee for the remainder of the annual accounting period. A minor source company ceasing operations during the annual accounting period will not receive a refund for annual emission fees paid.
- (e) The appropriate annual emissions fee for minor sources in operation on or after July 1, 1993, shall be calculated at an emission fee rate of \$12.50 per ton of allowable emissions of regulated

(Rule 1200-3-26-.02, continued)

pollutants. Sources with allowable emissions less than 10 (Ten) tons will not be subject to this fee, provided that such source has not taken a limitation on their permit that would render them a conditional major or synthetic minor source.

- (f) Deleted.
 - (g) Deleted.
 - (h) Deleted.
 - (i) The responsible official must pay an annual emission fee as per subparagraph 1200-3-26-.02(6)(e) of this paragraph. The annual emission fee will be calculated on no more than 4,000 tons per year of each regulated pollutant. An annual emission fee will not be charged for Carbon Monoxide.
 - (j) Deleted.
- (7) PAYMENT OF FEES.
- (a) All fees regulated by this chapter shall be payable to the Division of Air Pollution Control.
 - (b) Fees not paid, late fees, and returned checks are subject to the provisions of paragraph 1200-3-26-.02(8).
 - (c) Returned checks for any reason (i.e. insufficient funds, account closed, etc...) are considered failure to pay until such time collected funds are forwarded to the Division. Returned checks are subjected to an additional \$20.00 handling charge.
 - (d) Annual emission fee payments shall be clearly identified with the "Emission Source Reference Number" specified in the source's permit(s) or by an alternative method proposed by the source and agreed to by the Technical Secretary. Major sources paying fees on more than one SIC code at their facility shall denote the SIC code on their check for the account upon which they are paying. Delivery of the payment shall be to the location prescribed by the Technical Secretary.
- (8) LATE FEES - FAILURE TO PAY.
- (a) The Technical Secretary will not issue any certificate, permit or other official document subject to a fee in this chapter until the required fee has been paid in full to the Division.
 - (b) If any part of any fee imposed under this Rule 1200-3-26-.02 not paid within fifteen (15) days of the due date, a late payment penalty of five percent (5%) of the amount due shall at once accrue and be added thereto. Thereafter, on the first day of each month during which any part of any fee or any prior accrued late payment penalty remains unpaid, an additional late payment penalty of five percent (5%) of the then unpaid balance shall accrue and be added thereto. In addition, the fees not paid within fifteen (15) days after the due date, shall bear interest at the maximum lawful rate from the due date to the date paid, compounded monthly. The Division will consult with the State of Tennessee's Department of Finance and Administration to determine the appropriate rate of interest.
 - (c) It is the express intent of the Tennessee Air Pollution Control Board that late payment fees or interest accrued on an unpaid fee are not to be viewed by the Technical Secretary as a mitigating factor in calculating a civil penalty for construction or operating without the permits required by rule 1200-3-9-.01 and/or rule 1200-3-9-.02.

(Rule 1200-3-26-.02, continued)

(9) ANNUAL EMISSION FEES FOR MAJOR SOURCES.

- (a) A responsible official of a major source must pay an annual emission fee to the Division. A major source is not subject to the minor source annual emission fees of paragraph 1200-3-26-.02(6) on or after July 1, 1994. Once a major stationary source begins to pay major source annual emission fees, it will not be subject to the construction permit fees of paragraph 1200-3-26-.02(5) for any additional construction occurring at the source.
- (b) The annual major source emission fee shall be based upon the responsible official's choice of actual emissions or allowable emissions. If the responsible official chooses actual emissions, the magnitude of the source's emissions must be proven to the satisfaction of the Technical Secretary. The procedure for quantifying actual emission rates shall be specified in the major source operating permit. The costs of proving the actual emission rates on an annualized basis shall be born by the source above and beyond the cost of the annual emission fee-actual emission basis.
 - 1. Major source operating permit applicants shall make a binding fee payment choice to the Technical Secretary upon submission of their initial major source operating permit application. The fee choices are allowable based emission fees, actual based emission fees, or mixed actual and allowable based emission fees. Applicants who fail to declare their fee payment choice in their initial permit application shall be subject to paying their annual emission fees on an allowable emission basis. This default choice can be altered at reopening of the major source operating permit and renewal of the permit. Mixed approaches of actual and allowable based fees at a facility will be permitted only if the parts of the facility that will have actual emission based fees are monitored by a continuous emission monitoring system for the pollutant(s) being monitored that has been approved by the Technical Secretary as being capable of quantifying and recording the emission levels present at that part of the facility. The system may directly monitor the emissions or indirectly monitor the emissions through correlation of the instrument's readout with the emission levels that are indirectly monitored. (An example of direct instrumental monitoring would be an in-stack sulfur dioxide monitor. An example of an indirect instrumental method of monitoring would be a temperature recorder at an incinerator. The collected temperature data would be correlated with a graph curve plotting emission levels as a function of temperature.) Once the choice has been declared, it may be altered only during the following periods of eligibility. These periods occur upon expiration of the initial major source operating permit, renewal of an expired major source operating permit or reissuance of a major source operating permit. Major sources who have filed a timely, complete operating permit application in accordance with the title V provisions of the Federal Act, the implementing Federal regulations at 40 CFR Part 70 or any Division Rules promulgated thereunder, shall pay allowable emission based fees until the beginning of the next annual accounting period following receipt of their major source operating permit. At that time, they may begin paying their annual emission fee based upon their choice of actual or allowable based fees, or mixed actual and allowable based fees as approved by the Technical Secretary. Once permitted, altering the existing choice shall be accomplished by a written request of the major source, filed in the office of the Technical Secretary at least one hundred eighty (180) days prior to the expiration or reissuance of the major source operating permit.
- (c) Deleted.
- (d) The rate at which major source actual-based annual emission fees are assessed shall be \$30.00 per ton for the annual accounting period July 1, 2003, through June 30, 2004. The rate at which major source allowable-based annual emission fees are assessed shall be \$19.50 per ton for the

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annual accounting period July 1, 2003, through June 30, 2004. Notwithstanding any calculation of an annual fee using these rates, the annual fee that each major source is to pay shall not be less than \$2,500 for the annual accounting period July 1, 2003, through June 30, 2004. An annual revision to these rates and the minimum fee must result in the collection of sufficient fees to fund the activities identified in subparagraph 1200-3-26-.01(1)(c). These annual rates and the minimum fee shall be supported by the Division's annual workload analysis that is approved by the Board.

- (e) An emission cap of 4,000 tons per year per regulated pollutant per major source SIC code shall apply to actual or allowable based emission fees. A major source annual emission fee will not be charged for emissions in excess of the cap(s) or for carbon monoxide.
- (f) In the case where a source is shut down such that it has operated only during a portion of the annual accounting period and permits are forfeited to the Technical Secretary, the appropriate fee shall be calculated on a prorated basis over the period of time that the source was operated in the annual accounting period. A major source that is shutdown, but wishes to retain their permits, shall pay a maintenance fee equivalent to 40% of the fee that would be charged had they chosen the allowable emission based annual emission fee. If the source chooses this option in the midst of an annual accounting period, the fee will be prorated according to the number of months that the source was in the maintenance fee status. The source shall notify the Division no later than January 31 prior to the end of the annual accounting year (June 30) to provide the Division sufficient time to adjust billing records for the maintenance fee status.
- (g) Major sources must conform to the following requirements with respect to fee payments:
 - 1. If a major source choosing an allowable based annual emission fee wishes to restructure its allowable emissions for the purposes of lowering its annual emission fees, a mutually agreed upon, more restrictive regulatory requirement may be established to minimize the allowable emissions and thus the annual emission fee. The more restrictive requirement must be specified on the permit, and must include the method used to determine compliance with the limitation. The documentation procedure to be followed by the major source must also be included to insure that the limit is not exceeded. Restructuring the allowable emissions is permissible only in the annual accounting periods of eligibility specified in Part 1200-3-26-.02(9)(b)1 and only, if the written request for restructuring is filed with the Technical Secretary at least 120 days prior to the beginning of the annual accounting period of eligibility.
 - 2. Beginning with the annual accounting period beginning July 1, 1997 to June 30, 1998, major sources paying on allowable based emission fees will be billed by the Division no later than April 1 prior to the end of the accounting period. The major source annual emission fee is due July 1 following the end of the accounting period.
 - 3. Beginning with the annual accounting period beginning July 1, 1997 to June 30, 1998, major sources choosing an actual based annual emission fee shall file an actual emissions analysis with the Technical Secretary which summarizes the actual emissions of all regulated pollutants at the air contaminant sources of their facility. Based upon the actual emissions analysis, the source shall calculate the fee due and submit the payment and the analysis each July 1st following the end of the annual accounting period.
 - 4. Beginning with the annual accounting period beginning July 1, 1997 to June 30, 1998, major sources choosing a mixture of allowable and actual based emission fees shall file an actual emissions and allowable emissions analysis with the Technical Secretary which summarizes the actual and allowable emissions of all regulated pollutants at the air contaminant sources of their facility. Based upon the analysis, the source shall calculate

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the fee due and submit the payment and the analysis each July 1st following the end of the annual accounting period.

- (i) The mixed based fee shall be calculated utilizing the 4,000 ton cap specified in subparagraph 1200-3-26-.02 (2) (i). In determining the tonnages to be applied toward the regulated pollutant 4,000 ton cap in a mixed based fee, the source shall first calculate the actual emission based fees for a regulated pollutant and apply that tonnage toward the regulated pollutant's cap. The remaining tonnage available in the 4,000 ton category of a regulated pollutant shall be subject to allowable emission based fee calculations for the sources that were not included in the actual emission based fee calculations. Once the 4,000 ton cap has been reached for a regulated pollutant, no additional fee shall be required.
5. Major sources choosing to pay their major source annual emission fee based on actual based emissions or a mixture of allowable and actual based emissions may request an extension of time to file their emissions analysis with the Technical Secretary. The extension may be granted by the Technical Secretary up to ninety (90) days. The request for extension must be received by the Division no later than 4:30 p.m. on July 1 or the request for extension shall be denied. The request for extension to file must state the reason and give an adequate explanation. An estimated annual emission fee payment of no less than eighty percent (80%) of the fee due July 1 must accompany the request for extension to avoid penalties and interest on the underpayment of the annual emission fee. A remaining balance due must accompany the emission analysis. If there has been an overpayment, a refund may be requested in writing to the Division or be applied as a credit toward next year's major source annual emission fee. The request for extension of time is not available to major sources choosing to pay their major source annual emission fee based on allowable emissions.
- (h) Newly constructed major sources or minor existing sources modifying their operations such that they become a major source in the midst of the standard July 1st to June 30th annual accounting period, shall pay allowable based annual emission fees for the fractional remainder of the annual accounting period commencing upon their start-up. At the beginning of the next annual accounting period, the "responsible official" of the source may choose to pay annual emission fees based on actual or allowable emissions or a mixture of the two as provided for in this rule 1200-3-26-.02.
 - (i) Deleted.

Authority: T.C.A. §§4-5-201 et. seq., 4-5-202, 68-201-105, 68-203-101 et seq., 68-203-103, and 68-203-105. **Administrative History:** Original rule filed June 1, 1990; effective July 16, 1990. Repeal and new rule filed July 5, 1994; effective September 18, 1994. Amendment filed March 13, 1997; effective May 27, 1997. Amendment filed March 23, 1998; effective June 6, 1998. Amendment filed March 26, 1999; effective June 9, 1999. Amendment filed April 17, 2000; effective July 1, 2000. Amendment filed December 21, 2000; effective March 6, 2001. Amendment filed January 14, 2002; effective March 30, 2002. Amendment filed May 23, 2003; effective August 6, 2003. Amendment filed May 17, 2004; effective July 31, 2004.

1200-3-26-.03 REPEALED.

Authority: T.C.A. §§68-1-1301, 68-25-105, and 4-5-201 et. seq. **Administrative History:** Original rule filed March 5, 1993; effective April 19, 1993. Amendment filed March 18, 1994; effective June 1, 1994. Amendment filed November 4, 1996; effective January 18, 1997. Repeal filed June 26, 2001; effective September 7, 2001.